

REMARKS

Claims 1, 2, 4-7, and 12-33 are pending in this application. Claims 1 and 28 are in independent form. Claims 2, 4-7, 12-27, and 33 depend from claim 1, and claims 29-32 depend from claim 28. Claims 1, 2, 27, 28, and 30 have been amended. Claims 8-11 were previously cancelled. Claim 3 is cancelled herein because the subject matter of claim 3 has been incorporated into claim 1. In addition, part of the subject matter of claim 30 has been inserted into claims 1 and 28. Claim 27 was amended to change the claim dependency since claim 27 previously depended from cancelled claim 3. No new matter has been entered.

The Amendments to Claims 1, 2, 28, and 30 Do Not Raise a New Issue--Therefore an Advisory Action on This Basis Would be Improper

As an initial matter, applicant submits it will be improper for the Examiner to refuse to consider this amendment on the basis of raising a new issue. The subject matter of independent claims 1 and 28 was previously found in claims 3 and 30. The Examiner apparently failed to consider this claim language in issuing his global rejections based upon Semak and Hestetune (which were both identified by the Examiner in connection with the first office action). Applicant submits that the Examiner could have raised the pending rejections in the first office action, which would have then given the applicant a full opportunity to address the rejections without having the threat of a final action pending. Therefore, applicant respectfully requests that the Examiner consider this when deciding whether to issue an advisory action claiming that the amended claims raise a new issue--since they clearly do not--and to discuss this matter with his Supervisor in the event that he feels an advisory action on the basis of raising a new issue is warranted.

Response to Rejections

Firstly, applicant notes that formal drawings were submitted with the Amendment filed on October 21, 2004. The Examiner did not indicate his acceptance of the drawings. Applicant requests that the Examiner indicate that the drawings have been either accepted or rejected.

Secondly, in the Examiner's "Response to Arguments" section of the office action, the Examiner indicated that "no arguments were provided that were directed toward the claims rejected under 35 USC 103(a), and such is therefore taken as a concession." Applicant disagrees.

Because applicant had shown that the primary references used by the Examiner did not show all the elements of the claims (namely Semak, Beane, and Galigan), the addition of Gray, Jr. did not provide the missing elements. Therefore, applicant stated and felt that it was quite clear based upon the arguments with respect to Semak that "the claims are neither anticipated nor obvious in view of the cited prior art." Applicant has not made any concessions with respect to obviousness, and continues to submit that the rejections made herein are unwarranted.

Claim 2 was rejected as indefinite because applicant used the word "Velcro™" in the claim. Applicant has amended claim 2 to specify the material in a manner other than by using the trade name. Applicant submits that the amendment to claim 2 obviates the indefiniteness rejection.

In the office action, the Examiner rejected claims 1, 2, 4-7, 12, 13, 15, 17, 18, 23-26, 28, 29, 31, and 33 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,226,456 to Semak. Claims 3, 14, 16, 20-22, 27, 30 and 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Semak. Claim 19 was rejected based upon the combination of Semak and U.S. Patent No. 5,489,126 to Gray, Jr. Claims 1, 2, 4-6, 12, 15, 24, 28, 29, and 33 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,386,238 to Hestetune.

Rejections based upon Semak

Claim 1 has been amended to include the limitations of previously examined claim 3. Claim 28 has been amended to include a limitation of previously examined claim 30. The Examiner stated in the office action that the "handle" taught by Semak was the cord 20 that extends through the pockets 18 of Semak. Specifically, the Examiner found that the portion of the cord 20 that is positioned in the gaps 56 provides an element for grasping.

Semak discloses a sleeve for positioning around a hose. As shown in Fig. 2, a sheet of material is sewn to form a primary tube 16 and several smaller secondary tubes or pockets 18 are connected along the length of the primary tube 16. The pockets 18 are used to suspend the primary tube 16 when the tube is used to hold a hose for draining a holding tank. A cord 20 extends through the pockets 18 to suspend the primary tube 16. The cord 20 is fixed at the ends of the cord, as shown in Fig. 2 by stake 48 and in Fig. 3 by strap 44. Importantly, during use the cord 20 may be used to suspend the primary tube 16 on stakes 52, as shown in Fig. 4.

The Examiner contends that the cord 20 is equivalent to the claimed "means for carrying" in the form of a strap. Applicant disagrees. The cord 20 cannot be used as a means for carrying the hose. In the suspended position, shown in Figs. 2, the ends of the cord are connected to the ground or another immovable object--the hose is positioned in a fixed location. In the unsuspended position, the ends of the cord are free and the hose is movable, but if a user were to attempt to pick up the hose using the cords 20 between gaps 56, the cord would pull out of the pockets 18 because the ends of the cord would be free. Based upon these differences, it is clear that the cord 20 is not an equivalent means for carrying, as claimed.

In addition, other major differences are evident. Claim 1 requires that the means for carrying be a strap and claim 28 states that the handle is a strap. In both cases, the strap is in the form of a loop that extends at least partially around the circumference of the sleeve. The claimed design provides for a more strong and substantial support that is designed to lug around a heavy hose. In addition, since the strap extends around at least part of the circumference of the sleeve, the connection provided between the strap and the sleeve can be made more reliable. Other benefits are also provided by the claimed covering.

Rejections based upon Hestetune

Hestetune describes a sack or sheath 10 in the form of a tube that has ties 30, 32 at the ends of the tube. The Examiner states that these ties are handles that can be used to carry the sheath 10. The ties are referred to in the specification as "fastening devices" that are used to secure sheath 10 to a coiled device. (col. 2, lines 17-19). These ties are described as being "any suitable fastening device or securing device . . . which permits first end 12 and second end 14 to remain coupled to a coiled device (not shown in Fig. 1), such as, but not limited to, mechanical devices, interlocking devices, hook and pile fasteners, hook and loop fasteners, tab and slot devices, locking mechanisms, magnets, tying systems, or clips." (col. 2, lines 23-29).

The ties of Hestetune are more akin to the "restraint" of the pending claims. Hestetune does not teach or suggest that the ties can be used to carry the sheath. Applicant submits that the Examiner's suggestion that the ties at the ends of the sheath can be used for carrying is in hindsight of applicant's invention. Importantly, the amended independent claims require that the carrying means and handle be a strap. Hestetune does not teach anything about a strap. For these reasons, applicant submits that the claims are not anticipated by Hestetune. In addition,

applicant does not understand why this reference was not raised in connection with the first office action.

103 Rejections

The Examiner states that Semak alone, or in combination with Gray renders the claims unpatentable. Applicant previously has shown that Semak does not teach or suggest all the elements of claims 1 and 28, or of the claims that depend therefrom. For instance, Semak does not teach the strap of claims 1 and 28. Applicant disagrees that a strap is the same thing as a wire, and that a wire is merely a mechanical design choice. This is clearly only the Examiner's opinion, with no other basis. A strap and a cord or wire are completely different, especially in the manner that they are attached to the covering. As applicant previously discussed, the cord of Semak is not even intended to serve as a handle or as a means for carrying something, because it is required to be connected to an immovable object or the ground. Therefore, applicant submits that it is not simply a matter of design choice or an obvious choice of mechanical expedients. Without proof of such, applicant submits that the rejection based upon Semak is unfounded. Because all the claims require the claimed strap, and this strap is neither taught nor suggested by Semak, the rejection of the dependent claims is unfounded for the same reason. Thus, applicant has not addressed the other statements raised by the Examiner since they are not necessary given the clear differences present in the independent claims. The same is also true with respect to claim 19. The straps are not taught by the combination of references. Therefore, claim 19 cannot be rendered obvious by the combination.

Based upon these differences, applicant submits that the claims are neither anticipated nor obvious in view of the cited prior art.

In view of the above amendments and remarks, applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help to resolve any remaining issues.

No fees are believed to be due with the submission of this Amendment, other than a fee for an extension of time. Should any other fees be required, the Commissioner is authorized to charge such fees to deposit account No. 50-1432.

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Respectfully submitted,



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